



**STATE OF DELAWARE
THE PUBLIC SERVICE COMMISSION**

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January 23, 2014

MEMORANDUM

TO: The Chair and Members of the Commission

FROM: Malika Davis, Public Utility Analyst

SUBJECT: IN THE MATTER OF THE APPLICATION OF T&M ASSOCIATES FOR A CERTIFICATE TO PROVIDE ELECTRIC SUPPLY SERVICES WITHIN THE STATE OF DELAWARE (FILED NOVEMBER 4, 2013) - PSC DOCKET No. 13-437

On November 4, 2013, T&M Associates ("T&M" or the "Company") filed an application (the "Application") with the Delaware Public Service Commission ("Commission") for an Electric Supplier Certificate ("ESC") to act as a Broker in the State of Delaware in pursuant to §1012 of the Electric Utility Restructuring Act of 1999, 26 *Del. C.* §1001 - §1020 (the "Act"), and 26 *Del. Admin. C.* §3001, the Commission's Rules for Certification and Regulation of Electric Suppliers (the "Supplier Rules").¹

T&M is a corporation formed under the laws of New Jersey and has provided a business license issued by the Delaware Division of Revenue as proof that it is legally authorized and qualified to do business in the State of Delaware. The Company consents to the jurisdiction of the Delaware courts. The Company anticipates acting as a Broker for the sale or purchase of electricity serving residential, commercial, and industrial customers throughout the State of Delaware. The Company affirms in its Application that it will only present electricity supply contracts to its customers from Marketers/Electric Suppliers who are in compliance with all applicable PJM requirements. The Company did not post a surety bond since it is a Broker, and there are no service agreements between the Company and any Delaware Electric Distribution Company. The Company will not collect any fees or deposits from any of its customers for any of its brokerage services. The Company also did not provide any sample contracts for Residential or Small Commercial Customers as it is a Broker and will not have contracts with Retail Electric Customers to provide Electric Supply Service.

¹ All references to capitalized terms are set forth in 26 *Del. C.* §1001 and 26 *Del. Admin. C.* §3001.

On November 22, 2013, Staff provided T&M with a request for additional information necessary to complete the Company's Application for an ESC. Included in the request was a toll-free telephone number of a customer service department as required by Section 2.1.1.8.4 of the Supplier Rules. On December 18, 2013, the Company requested a waiver of Section 2.1.1.8.4 of the Supplier Rules. T&M is requesting a waiver of this requirement because "T&M intends to market its energy procurement advisory and consulting service to the commercial, industrial, residential and government segments within the state. T&M represents buyers and sellers of energy in states with deregulated energy supply markets as an Energy Broker/Energy Consultant. As such, T&M does not generate electric power or directly engage in wholesale or retail power transactions for its own account with energy marketing companies or third party suppliers." Additionally, The Company states that it does not intend to sell its services or to supply electric energy directly to residential consumers in Delaware at this time.

Section 2.5 of the Supplier Rules provides for a Waiver of Certification Requirements. Staff supports the waiver requested by T&M because the Company is seeking an ESC to operate as a Broker and will not have contracts with Retail Electric Customers to provide Electric Supply Service. Customers will be able to contact their Electric Supplier using a toll-free telephone number as required by the Supplier Rules. Additionally, T&M has an office located in Wilmington, Delaware which has a 302 area code.

In response to section 2.1.1.8.6 of the Supplier Rules, the Company disclosed that Mr. Mark Neisser plead guilty to one count of third degree Filing or Preparing False or Fraudulent Tax Returns by JCA Associates, Inc. on June 8, 2004 in New Jersey. On April 16, 2007, Mr. Neisser became an employee of T&M. On September 18, 2009 he was elected to the Board of Directors and became a Senior Vice President of the Company. The Company provided the Criminal Action Order related to the conviction. Additionally, the Application states that JCA Associates, Inc. ceased doing business in 2005 and that at no time did T&M have any ownership interest in JCA Associates or its affiliates and at no time did JCA Associates have any ownership interest in T&M or its affiliates.

Staff does not believe this conviction disqualifies the Company from obtaining an ESC to operate as a Broker for the following reasons.

- 1) The conviction was in 2004, almost 10 years ago.
- 2) The crime did not involve the sale of Electric Supply Service or the arrangement to purchase Electric Supply Service on behalf of Retail Electric Customers.
- 3) The Company is applying for certification as a Broker and will not handle any funds from Customers.
- 4) The crime did not involve T&M or its affiliates.
- 5) The corporate organizational chart shows that Mr. Neisser will not be responsible for Delaware operations.

Staff would like to point out that T&M also disclosed this conviction when the Company filed an application with the New Jersey Board of Public Utilities on August 21, 2013. The Company was approved to conduct business as an Energy Agent, Energy Consultant, and Private Aggregator on November 22, 2013 in New Jersey. Additionally, another applicant with a similar criminal disclosure was recently approved by the Maryland Public Service Commission ("MD PSC"). In that case, Staff of the MD PSC also recommended approval of the application to become a Broker because the conviction occurred the Company was founded, no one else in the Company's senior management or senior staff had been convicted of a felony, and due to the Company's business practices and status as a Broker there would

be little risk to residential customers. The Maryland Office of People's Counsel recommended conditional approval of the application due to the criminal disclosure. The MD PSC decided to accept the recommendation of the MD PSC's Staff and approve the application. However, the Company in that case did agree to provide the Office of People's Counsel with a criminal background check of its officers.

Based on Staff's review of the Application and the additional information provided, T&M has satisfied the requirements of the Act and the Supplier Rules. For the reasons stated above, Staff does not believe that the criminal disclosures should be a basis for a denial of the Application. Thus, Staff recommends the Commission approve the Application including the Company's requested waiver of the requirement of a toll-free telephone number.